



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Douglas Glass Company

File: B-237752

Date: February 9, 1990

Margaret E. Dailey, Esq., Cegavske & Associates, for the protester.
Donald Ramberg, for the interested party, Roseburg Glass Co.
Christine S. Williams, Esq., Office of General Counsel, General Services Administration, for the agency.
Catherine Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against nonreceipt of solicitation is dismissed as untimely where protest is filed more than 2 months after bid opening, and protester allowed 3 months to expire without inquiry concerning whereabouts of solicitation.

DECISION

Douglas Glass Company protests the proposed award of a contract under invitation for bids (IFB) No. TFTC-89-HA-7531, issued by the General Services Administration (GSA) for repair, maintenance, inspection and overhaul of government-owned vehicles on a requirements basis for the period from October 1, 1989, through September 30, 1990, with an optional 1-year extension period. Douglas complains that the agency improperly failed to provide it with a copy of the solicitation despite repeated requests.

We dismiss the protest as untimely.

Douglas, which had held the GSA contract for vehicle glass installation in the Roseburg, Oregon service area since 1987, first learned of the solicitation in early April of 1989, when it received GSA's presolicitation notice. Douglas marked the appropriate box to request a copy of the solicitation and returned the notice to GSA by return receipt mail on April 13. While GSA claims it mailed a copy of the solicitation to Douglas on that date, Douglas apparently did not receive it. Douglas subsequently made "repeated" telephone calls to a GSA telephone number and was

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assured that the solicitation would be forthcoming. Meanwhile, bids were opened on July 26. One bid was received for glass installation in the Roseburg service area. GSA planned to award the contract to that bidder, whose price was determined to be reasonable.

Having failed to receive a copy of the solicitation by September 1, Douglas searched its records for a different phone number for GSA and learned upon calling it that the solicitation had closed on July 26. Douglas filed an agency-level protest on September 12,^{1/} which was denied on November 3. The protest to our Office was filed on November 13.

Our Bid Protest Regulations require that protests be filed not later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1989). Our Regulations also provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3). Thus, to be timely under our Regulations, Douglas' agency-level protest would have to have been filed within 10 working days after it learned of the basis of its protest.

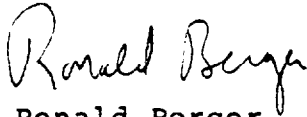
Douglas claims that it learned of the basis of its protest on September 1, when it learned that the solicitation it failed to receive had closed more than a month earlier. However, it is the duty of a protester to diligently pursue the information necessary to determine its basis of protest. John W. Gracey, B-232156.2, Jan. 23, 1989, 89-1 CPD ¶ 50. In our view, Douglas did not do so.

The presolicitation notice Douglas received stated that the solicitation was scheduled to be issued on or about May 1, 1989. The synopsis of the requirement published in the Commerce Business Daily (CBD) on May 8 gave a response deadline of May 15. According to Douglas' protest, no effort was made to determine the whereabouts of the solicitation or the status of the procurement until sometime in July. While Douglas allegedly made "repeated" telephone

^{1/} GSA argues that the letter it received from Douglas on September 12 was not an agency-level protest because it only declared an "intent" to protest. On the contrary, the letter expressed Douglas' dissatisfaction and requested corrective action, and was therefore a protest. Constantine N. Polites & Co.--Recon., B-233935.2, Feb. 17, 1989, 89-1 CPD ¶ 173.

calls beginning in July, it did not call the telephone number of the contracting office, which was listed in the CBD synopsis, nor did it make any effort to locate the telephone number of the contracting office until September 1. In our view it was not reasonable for the protester to wait 3 months before attempting any inquiry, or more than 4 months for a copy of the solicitation, before deciding to call a telephone number different from the one it had been using. We have held in similar circumstances that delays of 3 and 4 months do not satisfy the requirement for diligent pursuit. See John W. Gracey, B-232156.2, supra; Sacramento Metro. Officials Ass'n, B-230563, Mar. 16, 1988, 88-1 CPD ¶ 274.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Associate General Counsel